

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION NO.: 12-604
ECF CASE

-----X
MICHAEL ESTRADA, individually
and on behalf of others
similarly situated,

Plaintiff,

vs.

MAGUIRE INSURANCE AGENCY,
INC.,

Defendant.
-----X

DATE: November 27, 2012

TIME: 10:02 a.m.

Deposition of:

WILLIAM BENECKE

called for oral examination by counsel for
Plaintiff, pursuant to Subpoena, held at the
office of CONRAD, O'BRIEN, GELLMAN & ROHN, 1500 Market
Street, Centre Square, West Tower, Suite 3900,
Philadelphia, Pennsylvania, before CORINNE J. BLAIR, a
CRR, CCR, RPR, CLR, of Capital Reporting Company, and
a Notary Public of the Commonwealth of Pennsylvania.

<div>1 APPEARANCES</div> <div>2</div> <div>3 On behalf of Plaintiff:</div> <div>4 ROBERT WILEY, P.C.</div> <div>5 1825 Market Center</div> <div>6 Boulevard #385</div> <div>7 Dallas, Texas 75207</div> <div>8 (214) 528-6500</div> <div>9 BY: ROBERT WILEY, ESQ.</div> <div>10 Email: rwiley@robwiley.com</div> <div>11 BY: JESSICA COHEN, ESQ.</div> <div>12 Email: jcohen@robwiley.com</div> <div>13 On behalf of Defendant:</div> <div>14</div> <div>15 PROSKAUER ROSE, LLP</div> <div>16 1001 Pennsylvania Avenue, NW</div> <div>17 Suite 400 South</div> <div>18 Washington, DC 20004-2533</div> <div>19 BY: JOSHUA F. ALLOY, ESQ.</div> <div>20 Email: jalloy@proskauer.com</div> <div>21 (202) 416-5876</div> <div>22 BY: RAVINDER S. SANDHU, ESQ.</div> <div>23 Email: rsandhu@proskauer.com</div> <div>24 (202) 416-6814</div> <div>25 ALSO PRESENT:</div> <div>26 Scott Yurko, Esq.</div> <div>27 TMNA Services</div> <div>28 One Bala Plaza, Suite 100</div> <div>29 Bala Cynwyd, PA 19004</div> <div>30 (610) 538-2272</div> <div>31 scott.yurko@tmnas.com</div>	<div>1 STIPULATIONS</div> <div>2 IT IS HEREBY STIPULATED, by and between the</div> <div>3 attorneys for the respective parties hereto that:</div> <div>4 All rights provided by the C.P.L.R., and Part</div> <div>5 221 of the Uniform Rules for the Conduct of</div> <div>6 Depositions, including the right to object to any</div> <div>7 question, except as to form, or to move to strike</div> <div>8 any testimony at this examination is reserved; and</div> <div>9 in addition, the failure to object to any question</div> <div>10 or to move to strike any testimony at this</div> <div>11 examination shall not be a bar or a waiver to make</div> <div>12 such motion at, and is reserved to, the trial of</div> <div>13 this action.</div> <div>14 This deposition may be sworn to by the witness</div> <div>15 being examined before a Notary Public other than the</div> <div>16 Notary Public before whom this examination was</div> <div>17 begun, but the failure to do so or to return the</div> <div>18 original of this deposition to counsel within 60</div> <div>19 days, shall not be deemed a waiver of the rights</div> <div>20 provided by Rule 3116 of the C.P.L.R., and shall be</div> <div>21 controlled thereby. The filing of the original of</div> <div>22 this deposition is waived.</div> <div>23 IT IS FURTHER STIPULATED, that a copy of this</div> <div>24 examination shall be furnished to the attorney for</div> <div>25 the witness being examined without charge.</div>
<div>1 INDEX</div> <div>2 WITNESS EXAMINATION BY PAGE</div> <div>3 WILLIAM BENECKE MR. WILEY 5</div> <div>4 MR. ALLOY 218</div> <div>5</div> <div>6 EXHIBITS</div> <div>7 (Exhibits attached to transcript)</div> <div>8 EXHIBIT DESCRIPTION PAGE</div> <div>9 Benecke-1 Document, Bates Stamped 294 12</div> <div>10 Benecke-2 Excerpt from Employee Handbook 157</div> <div>11 Benecke-3 Employee New Hire Profile 160</div> <div>12 Benecke-4 Claims Examiner Job Description,</div> <div>Active 10/25/10 179</div> <div>13</div> <div>14 Benecke-5 Claims Examiner Job Description,</div> <div>Active 3/15/06 182</div> <div>15 Benecke-6 Performance Review of Mr. Estrada,</div> <div>2009 183</div> <div>16</div> <div>17 Benecke-7 Performance Review of Mr. Estrada,</div> <div>2010 183</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>1 W. BENECKE</div> <div>2 W-I-L-L-I-A-M B-E-N-E-C-K-E, called as a witness,</div> <div>3 having been first duly sworn by a Notary Public of</div> <div>4 the Commonwealth of Pennsylvania}, was examined and</div> <div>5 testified as follows:</div> <div>6 EXAMINATION BY</div> <div>7 MR. WILEY:</div> <div>8 Q The witness having been sworn, will you</div> <div>9 please state your full name for the record?</div> <div>10 A William John Benecke.</div> <div>11 Q Do you go by "Bill"?</div> <div>12 A I do.</div> <div>13 Q All right. Mr. Benecke, my name is Robert</div> <div>14 Wiley. I'm going to be taking your deposition</div> <div>15 today.</div> <div>16 Do you understand that?</div> <div>17 A Yes.</div> <div>18 Q And you understand that you're here</div> <div>19 testifying, not just as an individual human being,</div> <div>20 but as the corporate representative of Philadelphia</div> <div>21 Insurance Company; is that correct?</div> <div>22 A Yes.</div> <div>23 MR. ALLOY: Just to be clear, for the</div> <div>24 record, just like we were with the last</div> <div>25 deposition, when you refer to -- the defendant</div>

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<p style="text-align: right;">86</p> <p>1 W. BENECKE</p> <p>2 truthful representation from Mr. Estrada. But</p> <p>3 I don't recall coming across such circumstances</p> <p>4 in my review of his work-product.</p> <p>5 MR. ALLOY: Rob, if you have more</p> <p>6 questions in this particular line, go ahead,</p> <p>7 but, you know, we've been going about two</p> <p>8 hours --</p> <p>9 MR. WILEY: Yeah. Let's take a break.</p> <p>10 And I'm going to leave it to you guys. Do you</p> <p>11 want to do -- off the record.</p> <p>12 (A luncheon recess was taken from</p> <p>13 11:58 a.m. until 12:55 p.m.)</p> <p>14 MR. WILEY: Back on the record.</p> <p>15 BY MR. WILEY:</p> <p>16 Q All right. Sir, you understand that we</p> <p>17 are back on the record and you are still under oath?</p> <p>18 A Yes.</p> <p>19 Q Are there any answers that you've given me</p> <p>20 today that you wish to change or supplement at this</p> <p>21 time?</p> <p>22 A No.</p> <p>23 Q And we did have a short conversation in</p> <p>24 the hall when we ran into each other, but we didn't</p> <p>25 talk about this case or in anything of substance,</p>	<p style="text-align: right;">88</p> <p>1 W. BENECKE</p> <p>2 operations where we can offer them advice and</p> <p>3 recommendations how to reduce those risks to, you</p> <p>4 know, potentially cause them to reduce the amount of</p> <p>5 losses that they sustain; to reduce their potential</p> <p>6 premium costs for insurance as a result of those</p> <p>7 reductions and loss.</p> <p>8 Q Thank you.</p> <p>9 A As part of those loss control services, we</p> <p>10 may provide them advice on circumstances of law or</p> <p>11 industry that impacts them. We may introduce them</p> <p>12 to other business partners within the industry that</p> <p>13 provide services to their class of business that may</p> <p>14 benefit them in some way. We may do that with</p> <p>15 discounted pricing that we may have been able to</p> <p>16 negotiate as a result of the relationships that</p> <p>17 we've identified with these other businesses.</p> <p>18 I think those are some of the items</p> <p>19 that I would mention in answer to that question.</p> <p>20 Q Anything else?</p> <p>21 A I'm sure there is, but that would be my --</p> <p>22 Q Not that you can recall at this time?</p> <p>23 A That would be my answer at this time.</p> <p>24 Q You said, I think something along the</p> <p>25 lines of putting the customers back in a position</p>
<p style="text-align: right;">87</p> <p>1 W. BENECKE</p> <p>2 did we?</p> <p>3 A No.</p> <p>4 Q We did talk about the Dallas Cowboys,</p> <p>5 which is somewhat in substance, but not pertaining</p> <p>6 to this case.</p> <p>7 MR. ALLOY: Objection.</p> <p>8 BY MR. WILEY:</p> <p>9 Q All right. Let me get back to the</p> <p>10 questions.</p> <p>11 Sir, what product or service does</p> <p>12 Maguire bring to the marketplace?</p> <p>13 A Well, we issue an insurance policy that</p> <p>14 provides coverages that are important for --</p> <p>15 particularly for the commercial insurance operations</p> <p>16 that Philadelphia insures, to have protection from</p> <p>17 unexpected events, whether they be loss to property</p> <p>18 or casualty loss, that allows them to maintain their</p> <p>19 financial security by being put back into a position</p> <p>20 they were in prior to the incident occurring.</p> <p>21 In addition to the benefits and</p> <p>22 protections offered under that contract,</p> <p>23 Philadelphia and Maguire employees offer our</p> <p>24 insureds loss control services, where we help them</p> <p>25 identify risks and exposures to their business</p>	<p style="text-align: right;">89</p> <p>1 W. BENECKE</p> <p>2 where they were before the loss.</p> <p>3 Could you explain that in a bit more</p> <p>4 detail? What did you mean by that?</p> <p>5 A Well, what I meant by that was an incident</p> <p>6 or a claim will have occurred. They will have</p> <p>7 suffered a loss. And likely as a result of that</p> <p>8 loss, sustained property damage, be exposed to</p> <p>9 financial loss, and it would be the job of the</p> <p>10 employee responsible for that claim to identify, you</p> <p>11 know, what that loss has been or could be to help</p> <p>12 remedy that loss.</p> <p>13 Q And you would agree that putting the</p> <p>14 customer back in a position where they were before</p> <p>15 the loss, that's an important service that you</p> <p>16 offer?</p> <p>17 A Yes.</p> <p>18 Q And it is the claims examiners that go</p> <p>19 about effectuating that service; is that correct?</p> <p>20 That's what they're doing?</p> <p>21 A Yes.</p> <p>22 Q Just to knock some things out, claims</p> <p>23 examiners are not engaged in Human Resources; is</p> <p>24 that correct?</p> <p>25 And when I say that, I'm not talking</p>

<p style="text-align: right;">98</p> <p>1 W. BENECKE</p> <p>2 I think probably that would be the</p> <p>3 more common of experiences in the Customer Service</p> <p>4 role.</p> <p>5 Q And who's the head of the Customer Service</p> <p>6 department?</p> <p>7 A Seth Hall.</p> <p>8 Q Seth Hall. And is Mr. Estrada in</p> <p>9 Mr. Hall's chain of command?</p> <p>10 A No.</p> <p>11 Q And none of the other Fast Track auto</p> <p>12 claims examiners are in Mr. Hall's chain of command;</p> <p>13 is that correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. And I'm just going to go out on a</p> <p>16 limb and say, the same is true for Information</p> <p>17 Technology; that is separate from what the claims</p> <p>18 examiners do. Is that correct?</p> <p>19 A Yes.</p> <p>20 Q What department do the claims examiners</p> <p>21 fall under?</p> <p>22 A Claims department.</p> <p>23 Q And what is your title, sir?</p> <p>24 A Executive vice president and chief claims</p> <p>25 officer.</p>	<p style="text-align: right;">100</p> <p>1 W. BENECKE</p> <p>2 or was it just you?</p> <p>3 MR. ALLOY: Objection.</p> <p>4 THE WITNESS: I'm not sure I understand</p> <p>5 what you mean by "larger restructuring."</p> <p>6 BY MR. WILEY:</p> <p>7 Q Was it just like they changed your title,</p> <p>8 or was it part of a larger -- some of these</p> <p>9 companies realign things, move lines of command</p> <p>10 around, things like that.</p> <p>11 A My promotion and title was not associated</p> <p>12 with anything else involving any other parts of the</p> <p>13 organization.</p> <p>14 Q Okay. During the time that you have been</p> <p>15 the executive vice president -- sorry. Let me say</p> <p>16 that differently.</p> <p>17 During the time that you have been</p> <p>18 affiliated with Maguire Insurance Company, do you</p> <p>19 know whether or not claims examiners have ever been</p> <p>20 paid by the hour with overtime?</p> <p>21 MR. ALLOY: Objection. Are you talking</p> <p>22 about a specific group of claims examiners, all</p> <p>23 claims examiners?</p> <p>24 MR. WILEY: Yeah.</p> <p>25 BY MR. WILEY:</p>
<p style="text-align: right;">99</p> <p>1 W. BENECKE</p> <p>2 Q Are you the head of the claims department?</p> <p>3 A Yes.</p> <p>4 Q And Mr. Estrada would have been in your</p> <p>5 chain of command; is that correct?</p> <p>6 A Yes.</p> <p>7 Q As well as the rest of the Fast Track auto</p> <p>8 claims examiners; is that correct? They would have</p> <p>9 been in your chain of command?</p> <p>10 A Yes.</p> <p>11 Q How long have you been in that position?</p> <p>12 A In title?</p> <p>13 Q In title.</p> <p>14 A Four years.</p> <p>15 Q And were you somehow in that position but</p> <p>16 not in title?</p> <p>17 A Yes.</p> <p>18 Q Okay. Explain that to me.</p> <p>19 A The title changed in 2008 --</p> <p>20 Q Okay.</p> <p>21 A -- to be executive vice president. Prior</p> <p>22 to that, it was senior vice president.</p> <p>23 Q And how long were you in that position?</p> <p>24 A I don't recall. Several years.</p> <p>25 Q In 2008, was there a larger restructuring</p>	<p style="text-align: right;">101</p> <p>1 W. BENECKE</p> <p>2 Q Was there any individual claims examiners</p> <p>3 or group or sub-group of claims examiners that were</p> <p>4 paid hourly with overtime during the time you've</p> <p>5 been there?</p> <p>6 A No.</p> <p>7 Q So they've always been paid salary?</p> <p>8 A Yes.</p> <p>9 Q Was there -- has there always been</p> <p>10 essentially Fast Track claims examiner group for the</p> <p>11 duration of your time with Maguire?</p> <p>12 A No.</p> <p>13 Q Do you know when it was that that was</p> <p>14 created?</p> <p>15 A The Fast Track process, I would believe</p> <p>16 would have been created sometime perhaps in the 2005</p> <p>17 timeframe. Give or take a year. I'm guessing right</p> <p>18 now, but around that timeframe would probably be</p> <p>19 appropriate.</p> <p>20 Q Prior to your time at Maguire, did you</p> <p>21 work for other insurance companies?</p> <p>22 A Yes.</p> <p>23 Q Are you aware whether or not any of those</p> <p>24 insurance companies had paid their claims examiners</p> <p>25 or claims adjusters by the hour with overtime?</p>

<p style="text-align: right;">102</p> <p>1 W. BENECKE</p> <p>2 MR. ALLOY: You can answer.</p> <p>3 THE WITNESS: It's a confusing question.</p> <p>4 I think it's a two-part question.</p> <p>5 BY MR. WILEY:</p> <p>6 Q My question is whether or not you're aware</p> <p>7 of whether or not they had a pay practice of any of</p> <p>8 your prior employers where they were paying claims</p> <p>9 adjusters or claims examiners by the hour with</p> <p>10 overtime? (sic)</p> <p>11 MR. ALLOY: Objection. You can answer.</p> <p>12 THE WITNESS: I am aware of how the claims</p> <p>13 examiners were paid. So the answer to that is</p> <p>14 yes, I am aware of how they were paid. And --</p> <p>15 BY MR. WILEY:</p> <p>16 Q Then my second question would be --</p> <p>17 A -- none of them were paid as a -- as</p> <p>18 someone that would be entitled to overtime or on an</p> <p>19 hourly basis.</p> <p>20 Q All right. Before lunch, we had been</p> <p>21 talking about the process by which claims examiners</p> <p>22 process claims. I'm going to talk some more about</p> <p>23 that.</p> <p>24 We were going to talk about outside</p> <p>25 vendors. I think you had identified appraisers,</p>	<p style="text-align: right;">104</p> <p>1 W. BENECKE</p> <p>2 appropriate or necessary for the particular claim,</p> <p>3 they may engage or hire an independent contractor to</p> <p>4 go out, take photos of the damages, and write up an</p> <p>5 estimate; to then submit those photos and estimate</p> <p>6 to the claims examiner for the claims examiner to</p> <p>7 then review, evaluate and make judgments from.</p> <p>8 Q Now, the claims examiners, themselves, did</p> <p>9 not physically examine the vehicle; isn't that</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q Okay. And they were not, themselves,</p> <p>13 estimators or appraisers; isn't that correct?</p> <p>14 A That's not always entirely true.</p> <p>15 Q Can you tell me any of the Fast Track</p> <p>16 claims adjusters who were, in fact, appraisers?</p> <p>17 A There may be -- there may be some in the</p> <p>18 staff that are -- that were licensed appraisers, or</p> <p>19 had trained and worked as appraisers in a prior</p> <p>20 company or a prior job.</p> <p>21 Q So some of them may have been familiar</p> <p>22 with appraising, but that wasn't why you hired them</p> <p>23 to come work at Maguire. They were supposed to</p> <p>24 process these claims; correct?</p> <p>25 A No, I wouldn't say that. I would</p>
<p style="text-align: right;">103</p> <p>1 W. BENECKE</p> <p>2 independent adjusters, and there was one -- oh,</p> <p>3 private investigators as outside vendors.</p> <p>4 A Yes.</p> <p>5 Q Okay. Tell me what an appraiser is.</p> <p>6 A In what context?</p> <p>7 Q Well, I think you had said that the next</p> <p>8 step after the investigation was to see whether or</p> <p>9 not claims examiners want to hire outside vendors</p> <p>10 and you had identified appraisers, PI's and</p> <p>11 independent adjusters.</p> <p>12 So my question is: When you say</p> <p>13 "appraisers," what did you mean?</p> <p>14 A I'm sorry. I'm just looking for</p> <p>15 clarification --</p> <p>16 Q In the context of a Fast Track --</p> <p>17 A In the context of Philadelphia Insurance</p> <p>18 Company?</p> <p>19 Q At Maguire, yeah.</p> <p>20 A Okay.</p> <p>21 Q Forget wherever else you worked. We're</p> <p>22 back to Maguire. And that's what these questions</p> <p>23 will all relate to.</p> <p>24 A Okay. An appraiser is an independent</p> <p>25 contractor that if the claims examiner determines it</p>	<p style="text-align: right;">105</p> <p>1 W. BENECKE</p> <p>2 definitely not say that that's not why we hired them</p> <p>3 for the job.</p> <p>4 It is -- it was an added positive for</p> <p>5 a candidate that they had estimating an appraiser's</p> <p>6 skills because they would bring that skill-set to</p> <p>7 the job that they were required to do, in the claims</p> <p>8 examiner job for the company, when they're receiving</p> <p>9 estimates from body shops and the independent</p> <p>10 appraisers to understand better and more educated</p> <p>11 what they're looking at and to do it more</p> <p>12 efficiently.</p> <p>13 Q It was not a job requirement, however,</p> <p>14 though, that someone be an appraiser in order to be</p> <p>15 a claims examiner; correct?</p> <p>16 A It was an added plus, but not a job</p> <p>17 requirement.</p> <p>18 Q So in the absence of -- well, let me ask</p> <p>19 you this: Wouldn't Mr. Estrada have to hire an</p> <p>20 appraiser in every case so that he would know how</p> <p>21 much to pay?</p> <p>22 A No.</p> <p>23 Q And how is it that Mr. Estrada could</p> <p>24 possibly know how much to pay if he didn't hire an</p> <p>25 appraiser?</p>

<p style="text-align: right;">106</p> <p>1 W. BENECKE</p> <p>2 A He would request estimates from the owners</p> <p>3 of the vehicle, from their selection or preference</p> <p>4 from body shops. And then he would be charged with</p> <p>5 the responsibility of reviewing those estimates to</p> <p>6 make a determination whether he believed them to be</p> <p>7 a fair invoice for what -- for what is needed for</p> <p>8 repairs for the vehicle.</p> <p>9 Q Are you aware of Mr. Estrada ever</p> <p>10 challenging an appraiser's appraisal of a vehicle?</p> <p>11 A As part of his job responsibility, I would</p> <p>12 have expected him to have been doing that, yes.</p> <p>13 MR. WILEY: Objection. Non-responsive.</p> <p>14 BY MR. WILEY:</p> <p>15 Q Are you aware of Mr. Estrada ever having</p> <p>16 actually not followed an appraiser's recommendation?</p> <p>17 A I'm not aware of him not following the</p> <p>18 estimate, because you're asking me something that</p> <p>19 would have been an expectation that he would</p> <p>20 normally do, and you're asking me do I have proof</p> <p>21 that he did not normally do what he was supposed to</p> <p>22 do.</p> <p>23 I don't have any evidence of that as</p> <p>24 I'm sitting here today.</p> <p>25 Q Are you aware of some documents that says</p>	<p style="text-align: right;">108</p> <p>1 W. BENECKE</p> <p>2 responsibility.</p> <p>3 Q Why would Mr. Estrada, someone with a high</p> <p>4 school degree and dropped out of the University of</p> <p>5 Phoenix, no background in appraising, and by his own</p> <p>6 testimony, no good with estimates, supplant the view</p> <p>7 of an appraiser who's actually seen and looked at</p> <p>8 the vehicle with Mr. Estrada's own opinion?</p> <p>9 MR. ALLOY: Objection.</p> <p>10 THE WITNESS: I don't know what</p> <p>11 Mr. Estrada's motivations may be for this</p> <p>12 lawsuit and what he says in the context of this</p> <p>13 lawsuit, but I do know what examiners are</p> <p>14 trained to do and what is expected of them.</p> <p>15 And what an estimate itself says.</p> <p>16 It does not say the estimate is something</p> <p>17 that you will receive from the insurance</p> <p>18 company. It says that the amount is ultimately</p> <p>19 the decision of the insurance company, and</p> <p>20 Mr. Estrada would have been the person</p> <p>21 responsible for determining that amount as</p> <p>22 supported by the language of that contract --</p> <p>23 I'm sorry -- as supported by the language of</p> <p>24 that estimate.</p> <p>25 I would also add that in the insurance</p>
<p style="text-align: right;">107</p> <p>1 W. BENECKE</p> <p>2 that he was supposed to challenge what the appraiser</p> <p>3 said?</p> <p>4 A I don't know what specific language is in</p> <p>5 our documents and how it's stated, but it's a --</p> <p>6 it's a generally accepted understanding that you</p> <p>7 review and challenge something that is being</p> <p>8 submitted by a non-employee that is simply engaged</p> <p>9 to take a photo, write an estimate, and submit it to</p> <p>10 you for further review.</p> <p>11 The estimate, itself -- almost every</p> <p>12 estimate specifically supports that context. The</p> <p>13 estimate says -- most of the estimates say, "This is</p> <p>14 an estimate. It's not an approval to pay. It's not</p> <p>15 acceptance by the company to pay. That approval</p> <p>16 will be given by the insurance company." And that's</p> <p>17 the job that Mr. Estrada was expected to do.</p> <p>18 So the answer in and of itself that</p> <p>19 Mr. Estrada reviewed regularly is supportive of the</p> <p>20 context that it's not just written by the appraiser</p> <p>21 and that becomes the number that the parties should</p> <p>22 expect to receive.</p> <p>23 That final number is the</p> <p>24 determination by the claims examiner that's working</p> <p>25 for the insurance company, and that's his job and</p>	<p style="text-align: right;">109</p> <p>1 W. BENECKE</p> <p>2 industry, I don't know that a college degree is</p> <p>3 something that is anything close to a</p> <p>4 requirement for automobile appraisers. It's</p> <p>5 not something that would be a requirement for</p> <p>6 someone that is looking at the photos of</p> <p>7 damages for an automobile, seeing what the</p> <p>8 parts and labor hours are on that estimate, and</p> <p>9 making a determination whether he or she</p> <p>10 believes those items on that estimate are</p> <p>11 appropriate or not.</p> <p>12 BY MR. WILEY:</p> <p>13 Q Did you receive a notice of today's</p> <p>14 deposition?</p> <p>15 A Yes.</p> <p>16 Q Did you review it?</p> <p>17 A Yes.</p> <p>18 Q Okay. And I believe it had what's called</p> <p>19 a Subpoena Duces Tecum on it. It mentioned a number</p> <p>20 of documents.</p> <p>21 Do you recall that?</p> <p>22 A I don't recall it as I'm sitting here</p> <p>23 today.</p> <p>24 Q Do you or your attorneys have a written</p> <p>25 response to that Subpoena Duces Tecum?</p>

<p style="text-align: right;">146</p> <p>1 W. BENECKE</p> <p>2 A Yes.</p> <p>3 Q Am I correct that Mr. Estrada never</p> <p>4 interviewed physicians, because there was no bodily</p> <p>5 injury?</p> <p>6 A Correct.</p> <p>7 Q And by definition, Fast Track claims</p> <p>8 generally do not involve bodily injury; is that</p> <p>9 correct?</p> <p>10 A The Fast Track process is not a process</p> <p>11 that is expected to have bodily injury claims in it.</p> <p>12 That's not to say that examiners that</p> <p>13 are receiving Fast Track claims may not have claims</p> <p>14 in their responsibility that have bodily injury in</p> <p>15 it.</p> <p>16 Q Earlier you told me the steps that you</p> <p>17 went through, and I think we started in terms of</p> <p>18 what a examiner would do with the coverage issue.</p> <p>19 Was there actually a first step where</p> <p>20 they decided whether or not it was appropriate to be</p> <p>21 handled as a Fast Track claim?</p> <p>22 A Yes. That would be included within that,</p> <p>23 um --</p> <p>24 Q And if the examiner decided it was not</p> <p>25 appropriate to be handled as a Fast Track claim,</p>	<p style="text-align: right;">148</p> <p>1 W. BENECKE</p> <p>2 folks.</p> <p>3 Commercial Auto. There are times</p> <p>4 that a claim could have gone directly to the</p> <p>5 Commercial Auto Group, but instead was sent to the</p> <p>6 Fast Track Auto Group.</p> <p>7 And again, I would say that it would</p> <p>8 be up to the -- the individual and their supervisor</p> <p>9 whether it's something that collectively they</p> <p>10 believed they had the confidence and skill-set to</p> <p>11 keep themselves, or pass on, or send back.</p> <p>12 Q It's not my intent to be repetitive. We</p> <p>13 may have hit some of these before. I just want to</p> <p>14 knock them out so I can get my punch list done. We</p> <p>15 can go home.</p> <p>16 One of the ones on my list, though,</p> <p>17 is "inspecting property damage."</p> <p>18 And, again, I think we're agreed that</p> <p>19 claims examiners do not personally inspect property</p> <p>20 damage?</p> <p>21 A They do not personally inspect property</p> <p>22 damage.</p> <p>23 Q Okay.</p> <p>24 A That is correct. They do review photos of</p> <p>25 property damage.</p>
<p style="text-align: right;">147</p> <p>1 W. BENECKE</p> <p>2 could that examiner send it back to, I guess, the</p> <p>3 home office, or whoever assigns those claims?</p> <p>4 A Depending upon the individual. They may</p> <p>5 make that determination. They may speak to their</p> <p>6 supervisor. They may get feedback from the</p> <p>7 supervisor that, although, you know, they formulated</p> <p>8 this initial opinion, they should handle if for some</p> <p>9 period of time, or they -- based upon what they</p> <p>10 anticipate they should, they can stick with it.</p> <p>11 I think it's dependent upon the</p> <p>12 individual, their confidences, and the confidences</p> <p>13 that the supervisor has in them.</p> <p>14 Q If somebody in the Fast Track claims</p> <p>15 department got a American Specialty or a Commercial</p> <p>16 Auto claim, would they be expected to send it to the</p> <p>17 proper examiner group?</p> <p>18 A Well, American Specialty is a managing</p> <p>19 general agent. So any -- any claim that the agent</p> <p>20 was American Specialty would -- it would be a very</p> <p>21 rare circumstance where somehow or another that got</p> <p>22 assigned to an employee of the company. Just</p> <p>23 because it's very obvious when you get the claim,</p> <p>24 the claim has American Specialty on it, that you</p> <p>25 would then send it off to the American Specialty</p>	<p style="text-align: right;">149</p> <p>1 W. BENECKE</p> <p>2 Q The next one I have was "evaluating and</p> <p>3 making recommendations regarding coverage of a</p> <p>4 claim."</p> <p>5 And I think that we -- it's your</p> <p>6 testimony earlier was that they do do that?</p> <p>7 A Yes.</p> <p>8 Q "Reviewing factual information to prepare</p> <p>9 damage estimates."</p> <p>10 Isn't it true that the -- Mr. Estrada</p> <p>11 and the claims examiners did not, themselves,</p> <p>12 prepare damage estimates but had it done by</p> <p>13 appraisers or people that actually inspected the</p> <p>14 vehicle?</p> <p>15 A Or a body shop that was going to be</p> <p>16 responsible for the repairs of the vehicle.</p> <p>17 Q Correct.</p> <p>18 A Yes.</p> <p>19 Q If a settlement got negotiated, was there</p> <p>20 some sort of settlement agreement that was expected</p> <p>21 to be signed?</p> <p>22 A Typically, it would be for a third-party</p> <p>23 claim.</p> <p>24 For a first-party claim with an</p> <p>25 insured, typically it would not be a claim that we</p>